

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR16-2020

MARIO DESHAWN STEVENSON,

TRANSCRIPT OF  
SENTENCING

Defendant.

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The Sentencing held before the Honorable Leonard T. Strand, Judge of the United States District Court for the Northern District of Iowa, at the Federal Courthouse, 111 Seventh Avenue Southeast, Cedar Rapids, Iowa, August 29, 2016, commencing at 3:04 p.m.

APPEARANCES

For the Plaintiff:           TIMOTHY VAVRICEK, ESQ.  
Assistant United States Attorney  
111 Seventh Avenue Southeast  
Cedar Rapids, IA 52401

For the Defendant:       CHRISTOPHER J. NATHAN, ESQ.  
Assistant Federal Public Defender  
Suite 290  
222 Third Avenue Southeast  
Cedar Rapids, IA 52401

Also present:               Jessica Clark, U.S. Probation

Reported over the       Shelly Semmler, RMR, CRR  
telephone by:           320 Sixth Street  
Sioux City, IA 51101  
(712) 233-3846

1 THE COURT: Please be seated, everyone.

2 THE CLERK: This is United States of America versus  
3 Mario Deshawn Stevenson, Case Number 16CR2020. The United  
4 States Probation Office is represented by Jessica Clark.  
5 Counsel, please state your appearance.

6 MR. VAVRICEK: Tim Vavricek for the United States.

7 THE COURT: Good afternoon.

8 MR. NATHAN: For Mr. Stevenson who is present in  
9 court, Christopher Nathan.

10 THE COURT: Good afternoon to both of you. And we  
11 have our court reporter reporting by telephone today, so I'd  
12 appreciate it if everybody just remain seated when they speak  
13 and speak close to a microphone.

14 Shelly, are you able to hear us okay?

15 THE REPORTER: I am, Judge. Thank you.

16 THE COURT: All right. Thank you.

17 We are here for sentencing in this case.

18 Mr. Stevenson has pled guilty to one count in an indictment that  
19 charges him with possession with intent to distribute 50 grams  
20 or more of methamphetamine actual. I have had a chance before  
21 the hearing today to review the presentence investigation report  
22 and the various submissions of the parties.

23 Mr. Nathan, have you had the opportunity to review the  
24 presentence report with your client?

25 MR. NATHAN: Yes, Your Honor.

1 THE COURT: I noted that before the hearing today the  
2 defendant filed various exhibits designated as A through F.  
3 Mr. Vavricek, does the government have any objection to those  
4 exhibits?

5 MR. VAVRICEK: No, Your Honor.

6 THE COURT: Okay. Defense Exhibits A through F are  
7 received.

8 \* \* \* \*

9 (Defendant Exhibits A through F were admitted.)

10 \* \* \* \*

11 THE COURT: And I did review those before the hearing  
12 today.

13 Does any party have any additional evidence to offer  
14 today? Mr. Vavricek?

15 MR. VAVRICEK: No, Your Honor.

16 THE COURT: Mr. Nathan?

17 MR. NATHAN: No, Your Honor. Thank you.

18 THE COURT: Mr. Vavricek, is the government moving for  
19 the additional one-level reduction of the offense level for  
20 acceptance of responsibility under guideline 3E1.1(b)?

21 MR. VAVRICEK: Yes, Your Honor.

22 THE COURT: Okay. That motion is granted. And that  
23 results in a total reduction of three levels based on  
24 Mr. Stevenson's acceptance of responsibility in this matter. I  
25 do not believe there are any objections in the presentence

1 report that have to be resolved for purposes of scoring this  
2 case under the United States Sentencing Guidelines. Do you  
3 agree with that, Mr. Vavricek?

4 MR. VAVRICEK: Yes, Your Honor.

5 THE COURT: Mr. Nathan?

6 MR. NATHAN: Yes, Your Honor.

7 THE COURT: United States Probation has indicated that  
8 the total offense level in this matter is 34. Mr. Stevenson's  
9 criminal history category is 6, and that results in an advisory  
10 sentencing guideline range of 262 to 327 months. Do the parties  
11 agree with those calculations? Mr. Vavricek?

12 MR. VAVRICEK: Yes, Your Honor.

13 THE COURT: Mr. Nathan?

14 MR. NATHAN: Yes, Your Honor. I just wanted to  
15 clarify that the defense did put into a footnote in our  
16 sentencing memorandum that while Mr. Stevenson is correctly  
17 scored as a career offender it did not make sense to object at  
18 that time because it wasn't relevant to whether or not his range  
19 is 262 to 327, that for purposes of the motion for downward  
20 variance and just 3553(a) factors that it does appear that  
21 paragraph 31 and 32 do not have an intervening arrest and that  
22 the subtraction of 3 points from a criminal history score would  
23 result in a criminal history category of 5. Again, not relevant  
24 for the guideline calculation but . . .

25 THE COURT: Sure. And let's talk about that more. If

1 you -- if you feel it has some impact on the variance motion,  
2 we'll certainly talk about it at that time. But I did note that  
3 footnote, but you do agree -- you've already said this, but just  
4 for the record you agree that as far as at least the raw scoring  
5 under the United States Sentencing Guidelines that the issue you  
6 raised in the footnote has no impact; is that correct?

7 MR. NATHAN: Correct, Your Honor.

8 THE COURT: Okay. Thank you. I do find then -- I  
9 adopt -- for purposes of the calculations under the United  
10 States Sentencing Guidelines, I adopt United States Probation's  
11 findings that the total offense level here is 34.  
12 Mr. Stevenson's criminal history category is 6, and that results  
13 in an advisory guideline range of 262 to 327 months. Do the  
14 parties also agree that the statutory minimum sentence here is  
15 10 years and the statutory maximum sentence is life?  
16 Mr. Vavricek?

17 MR. VAVRICEK: Yes, Your Honor.

18 THE COURT: Mr. Nathan?

19 MR. NATHAN: Yes, Your Honor.

20 THE COURT: All right. Let's go ahead and talk about  
21 the motion for downward variance. It's been filed by the  
22 defense, and the government has filed a response. I have spent  
23 quite a bit of time going through the arguments and conducting  
24 some of my own research before the hearing today. But,  
25 Mr. Nathan, would you like to be heard on the motion?

1 MR. NATHAN: Yes, Your Honor.

2 THE COURT: Okay. Please go ahead.

3 MR. NATHAN: Thank you. There's no violence in  
4 Mr. Stevenson's criminal history. Mr. Stevenson has no  
5 convictions for assaultive conduct, both of which are to say  
6 there's little reason to believe that Mr. Stevenson is a risk to  
7 commit an act of violence when he is released from the instant  
8 sentence. Nor is there any violence in the instant offensive  
9 conduct.

10 In fact, what stands out is that Mr. Stevenson was  
11 owed drug money. He never made any threats to collect on the  
12 drug debt. And what stands out even more is despite the wealth  
13 of literature and case law that suggests that firearms are tools  
14 of the drug trade, that there's no evidence that Mr. Stevenson  
15 has ever possessed a firearm. Now, Mr. Stevenson may have a  
16 history of involvement with drugs, but it is equally clear that  
17 he has made sure that he does not possess firearms, and he has  
18 also made sure that he has never assaulted someone.

19 Now, what also struck the defense is that this is  
20 Mr. Stevenson's first arrest on a new criminal offense since  
21 2003. Now, even though he was locked up for about 3 of those  
22 years, the evidence suggests that after his relief -- excuse me,  
23 release from prison in 2007 that he showed he is capable of a  
24 lot more than dealing drugs. He went to college. He graduated  
25 from college with a bachelor's of science and a major in

1 business administration. He worked consistently either at  
2 Target, GNC, or other jobs. He reintegrated into the community  
3 to the point that it cannot be fairly disputed that when he is  
4 released from the instant sentence that he will be met with  
5 support by his community.

6 And it's a small inference to make that Mr. Stevenson  
7 would not have his community support if it did not believe he  
8 deserved it. And he is accompanied in court today by family and  
9 friends to confirm that inference.

10 Now, Mr. Stevenson and the defense recognize that he  
11 did reoffend, but again, his recidivism did not involve firearm  
12 possession, and it did not involve violence. And while he is  
13 responsible for approximately a half pound of actual  
14 methamphetamine, his role or level of culpability in the  
15 distribution of methamphetamine in the Waterloo area is less  
16 than clear. No drugs were found in either of the vehicles that  
17 were searched incident to the search warrant's execution. There  
18 were no drugs found inside of his residence. And while about  
19 \$1,700 was found in one of the vehicles and on his person, there  
20 was no additional U.S. currency found at the residence.

21 But perhaps most telling is that if Mr. Stevenson  
22 were, in fact, a violent drug dealer from whom society required  
23 protection, it's unlikely that the confidential informant would  
24 have cooperated against Mr. Stevenson, especially juxtaposed  
25 with Mr. Stevenson's own unwillingness to identify his source.

1           Now, all that said, he is a career offender, but he is  
2 what the defense and the commission has called a  
3 drug-trafficking-only career offender. And the following is not  
4 a concession, but reasonable minds could differ over whether  
5 actual methamphetamine is more serious than methamphetamine  
6 mixture, and reasonable minds could also differ over whether  
7 Mr. Stevenson is a middleman or a wholesaler. And, to a lesser  
8 degree or lesser extent, reasonable minds could also differ as  
9 to whether Mr. Stevenson's prior offenses involving  
10 approximately 11 rocks of crack cocaine and approximately 8  
11 grams of marijuana are minor amounts and minor offenses.

12           But in light of the commission's report and  
13 recommendation that drug-trafficking-only career offenders not  
14 be treated the same as violent career offenders, it's difficult  
15 to see how even a sentence of 262 months is necessary.

16           The commission's recommendation to Congress is based  
17 on data that supports that drug-trafficking-only career  
18 offenders not be treated the same as drug-trafficking-only  
19 noncareer offenders. And defendants like Mr. Stevenson do not  
20 reoffend as frequently as violent career offenders, and they  
21 don't reoffend to the same extent as violent offenders. The  
22 commission's report deserves consideration. It's not a  
23 wholesale attack on the career offender guidelines. It's  
24 narrowly tailored based on its study to defendants like  
25 Mr. Stevenson who don't have any violence either in their



1 background or in the instant offense.

2 Without application of the career offender guideline,  
3 Mr. Stevenson's total offense level would be 29, and without  
4 application of the career offender guideline, based on the lack  
5 of an intervening arrest between paragraph 31 and paragraph 32,  
6 his criminal history category would 5 -- would be 5. And that  
7 would result in an advisory range of 140 to 175 months. And the  
8 defense would ask for a sentence at the low end of that range.  
9 Thank you, Your Honor.

10 THE COURT: Thank you, Mr. Nathan.

11 Mr. Vavricek, do you have a response?

12 MR. VAVRICEK: Thank you, Your Honor. The government  
13 would largely rest on the brief that it has filed at docket  
14 number 28.

15 Looking at this case, what I would discern, Your  
16 Honor, is two separate policy reasons for a downward variance.  
17 The first would be criticism of methamphetamine as related to  
18 other drugs, and then the second is the attack on the career  
19 offender guideline. And I think it's appropriate that  
20 Mr. Nathan focused on the career offender guideline in this case  
21 because there are two difficulties that seem to come to the  
22 forefront with the methamphetamine -- the attack on the  
23 methamphetamine guideline.

24 First of all, that guideline's not driving this  
25 sentence. What's driving this sentence is the career offender

1 guideline.

2           And the second is that with a drug such as  
3 methamphetamine, I think Your Honor can draw upon Your Honor's  
4 experience in life that in Iowa methamphetamine is not the type  
5 of drug that necessarily is adequately captured by the times  
6 people go to an emergency room. Rather, the scourge is a  
7 long-term addiction that results in great pain and suffering  
8 both to the person and to their family members.

9           With respect to the career offender policy argument, a  
10 number of the defendant's points are well taken on the facts of  
11 this case. There is little to no history of violence. The  
12 prior predicates are all controlled substance offenses based on  
13 lower levels of drug dealing. Yet what it does demonstrate is  
14 that this defendant has engaged in the same conduct over and  
15 over again.

16           So when the defendant says that statistically folks  
17 who have controlled-substance-only career offender type offenses  
18 are less likely to recidivate, what we have before us is this  
19 particular defendant who has devoted his entire life to crime,  
20 basically the same type of crime: Drug dealing. And one can  
21 argue that it has only escalated as he has gotten older because  
22 here we have much larger quantities in the instant offense.

23           I would like to note an error in the government's  
24 brief for Your Honor. On page 4 there is a assertion or an  
25 assumption that the defendant had spent up to ten years in state

1 prison following his 2004 conviction. Mr. Nathan brought to my  
2 attention today and we agree that it was -- as Mr. Nathan said,  
3 it was more on the order of three years. It appears he spent  
4 time in prison from March of 2004 to April of 2007 and then  
5 again on the revocation from November of 2012 to April of 2013.

6 THE COURT: Thank you, both of you, for clearing that  
7 up. By the way, I found that to be kind of confusing, and it  
8 seemed to be a gap in the criminal history as to while the  
9 sentences were all in there the amount of time that  
10 Mr. Stevenson actually served was a little unclear to me, so I  
11 appreciate the two of you each clearing that up.

12 But go ahead, Mr. Vavricek.

13 MR. VAVRICEK: All that said, I think, you know, over  
14 the last 10 years, the rate at which the defendant was  
15 committing offenses has gone down, yet we have a defendant who's  
16 40 years old. And again, the conduct has escalated. And he  
17 has -- here he is in the instant offense driving a Mercedes  
18 around the streets of Waterloo and a Lincoln with large  
19 quantities of meth which is certainly a concern not only to the  
20 government but to the people who live in that community.

21 So with all that said, Your Honor, the government  
22 requests a sentence at the low end of the advisory guideline  
23 range of 262 month -- 262 months.

24 The government would add that given this defendant's  
25 poor performance on probation and parole in the past that a term

1 of supervised release would also be appropriate in the  
2 government's view. Thank you.

3 THE COURT: Okay. Thank you.

4 Mr. Nathan, any response?

5 MR. NATHAN: No, Your Honor. Thank you.

6 THE COURT: Before I find out if Mr. Stevenson has  
7 anything to say today, are there other issues that we need to  
8 address other than the length of Mr. Stevenson's sentence?  
9 Mr. Vavricek, are you aware of any?

10 MR. VAVRICEK: No, other than the government would  
11 agree that the -- if the career -- if the career offender  
12 guideline did not apply to the extent the Court finds it's  
13 relevant, Mr. Nathan is correct that the guidelines range would  
14 be 140 to 175 based on total offense level 29, category 5 due to  
15 the intervening arrest issue that he correctly identified.

16 THE COURT: Okay. Thank you.

17 Mr. Nathan, are you aware of any other issues we  
18 should be talking about?

19 MR. NATHAN: No, Your Honor.

20 THE COURT: Okay. Thank you.

21 Mr. Stevenson, you have the right to speak at your  
22 sentencing hearing and to tell me anything you would like me to  
23 know and to consider as I decide what your sentence should be.  
24 But you also have the right under our Constitution to remain  
25 silent. And if you decide to remain silent, I would not hold

1 that against you at all. But having said that, sir, is there  
2 anything you'd like to say?

3 THE DEFENDANT: Yes. Just --

4 THE COURT: Is your microphone on? I want to make  
5 sure our court reporter can -- can you pull yours over? Thank  
6 you, Mr. Nathan.

7 THE DEFENDANT: I just want to say I know it was  
8 wrongdoing. There are consequences, and I accept responsibility  
9 for the consequences that I have set before me today. However,  
10 it is not a direct indication of my character or the type of  
11 person that I am. I have a great support system, and I ask the  
12 Court just to have mercy on me when rendering a sentence because  
13 I can and will be a productive member of society.

14 THE COURT: Okay. Thank you, sir.

15 Anything further from the attorneys? Mr. Vavricek?

16 MR. VAVRICEK: No, Your Honor.

17 THE COURT: Mr. Nathan?

18 MR. NATHAN: No, Your Honor. Thank you.

19 THE COURT: For the record, as I indicated earlier, I  
20 do adopt the findings of United States Probation concerning the  
21 United States Sentencing Guidelines. The total offense level in  
22 this case is 34; criminal history category for Mr. Stevenson is  
23 6. The parties agree that that results in an advisory guideline  
24 sentencing range of 262 to 327 months.

25 As I indicated at the beginning, I have spent a lot of

1 time considering this case both before the hearing today and  
2 obviously as I've listened to the attorneys and listened to  
3 Mr. Stevenson. This is a very -- in my mind a very unique and  
4 unusual situation. Mr. Stevenson has done a lot of good things,  
5 and the letters of support that are included I believe as part  
6 of Defense Exhibit C, very heartfelt and have been very helpful  
7 to me as I consider this case. It almost to me seems like  
8 they're talking about a different person because the letters --  
9 everybody who wrote a letter for the -- at least -- maybe I  
10 shouldn't say everybody, but for the most part the letters  
11 indicate shock and surprise that Mr. Stevenson finds himself in  
12 this situation, talk about all the good things he's done. And  
13 certainly as Mr. Nathan indicated, he has done a lot of good  
14 things since being released from prison including getting a  
15 college degree, a lot of other positive things in the community.

16 So that all is on the good side. And like pretty much  
17 everybody else, no one is all good or all bad, and there's  
18 definitely a lot of good in Mr. Stevenson.

19 There's also a lot of bad. He does have a history of  
20 felony drug dealing. And you would hope that most people would  
21 learn from that, and we hear statistics at sentencings all the  
22 time about as people get older they're less likely to commit  
23 crimes and more likely to start a better path than continuing  
24 the crimes that got them in trouble to begin with.

25 And after some period of time of not committing

1 crimes, all of a sudden Mr. Stevenson not only started selling  
2 drugs again, but, as Mr. Vavricek points out, it appears to be  
3 at an escalated level given the relatively low amounts at issue  
4 in his prior convictions. Now all of a sudden he's caught --  
5 he's talking about a half pound of meth at a time, and the  
6 quantities are certainly of a different category than his prior  
7 convictions.

8           So in a lot of ways it's almost like we have two  
9 separate people in the courtroom today, and yet there really is  
10 only one defendant, and it's Mr. Stevenson.

11           All of that is a long-winded way of saying that I am  
12 going to grant the motion for downward variance. I do think  
13 under the circumstances a sentence of -- in the guideline range  
14 of 267 months -- or 262 months or higher is far greater than  
15 necessary to accomplish all of the relevant sentencing purposes.

16           I find -- while I find the career offender enhancement  
17 was properly applied here, I find that it does under the facts  
18 presented here result in a sentence that would be too harsh  
19 primarily for the reasons Mr. Nathan indicated and a lot of the  
20 reasons that I've already mentioned.

21           But this is not a situation involving firearms or  
22 violence. The prior convictions were all relatively low-level  
23 drug-dealing convictions. While they were felonies, they are at  
24 the low end involving no violence, no firearms, no aggravating  
25 circumstances so far as I can tell.

1           So while probation correctly scored this as a career  
2 offender case, I find that applying the career offender  
3 enhancement under the facts present here would be too harsh.

4           That leaves me to try to decide what is the  
5 appropriate sentence for Mr. Stevenson in this case. While 262  
6 months is too harsh, there is some number that's still quite  
7 significant that's going to have to be imposed here to be  
8 sufficient to accomplish all sentencing purposes.

9           After a lot of consideration and review, I've decided  
10 that 180 months is the appropriate sentence for Mr. Stevenson in  
11 this case. It is a significant reduction from the guideline  
12 range. It also still reflects 15 years of imprisonment. I  
13 find -- given the fact that he has had three prior drug  
14 distribution felonies and nonetheless went back to distributing  
15 drugs, I find that a very significant sentence is appropriate.  
16 So I find that 180 months after considering all of the relevant  
17 sentencing factors is sufficient but not greater than necessary  
18 to accomplish all sentencing purposes.

19           In reducing the sentence by a significant amount, I am  
20 taking into account the nature of the offense which includes the  
21 lack of any violence or firearms, the relatively short time  
22 period at issue with regard to the offense. I'm also putting a  
23 lot of weight into the additional characteristics as reflected  
24 especially by the letters of support that were sent on  
25 Mr. Stevenson's behalf, his community ties, his good works in



1 the community. He's expressed remorse here. I find that all of  
2 those are factors that justify a downward variance.

3 So while I'm not varying quite to the extent requested  
4 by the defense, I do find that a significant variance is  
5 appropriate. And as indicated, I've determined that 180 months  
6 is the appropriate sentence in this case.

7 As such, Mr. Stevenson, it is the judgment of this  
8 Court that you are committed to the custody of the Bureau of  
9 Prisons for a total term of 180 months.

10 Mr. Nathan, do you have any recommendations you'd like  
11 me to make to the Bureau of Prisons?

12 MR. NATHAN: Just that he be placed within 500 miles  
13 of the Waterloo address listed in the PSR, Your Honor.

14 THE COURT: Okay. I will make that recommendation  
15 then that Mr. Stevenson be placed at a facility that's  
16 commensurate with his security and custody classification needs  
17 within 500 miles of Waterloo, Iowa.

18 Upon release from imprisonment, Mr. Stevenson will be  
19 on supervised release for a total term of five years. Within 72  
20 hours after you're released by the Bureau of Prisons, sir, you  
21 have to report in person to the probation office in the district  
22 to which you are released.

23 When you're on supervised release, you cannot commit  
24 another federal, state, or local crime. You must comply with  
25 all the general and standard conditions of supervision that will

1 be set out in the Court's judgment order. You'll also have to  
2 comply with the special conditions of supervision that were  
3 described in the presentence report. Those will also be  
4 included in the judgment order.

5 I find you do not have the ability to pay a fine. You  
6 will have to pay a special assessment of a hundred dollars to  
7 the United States. That's due immediately. You are remanded to  
8 the custody of the United States marshal.

9 You do have the right to appeal the sentence I've  
10 imposed here today. Your appeal would go to the United States  
11 Court of Appeals for the Eighth Circuit which is based in  
12 St. Louis. If you'd like to file an appeal, you have to file a  
13 written notice within 14 days of the date I file the judgment  
14 order in this case. If you appeal and you can't afford an  
15 attorney, then one would be appointed to represent you.

16 There are no counts to be dismissed here.

17 Anything further, Mr. Vavricek?

18 MR. VAVRICEK: No, Your Honor. Thank you.

19 THE COURT: Mr. Nathan, anything further?

20 MR. NATHAN: No, Your Honor. Thank you.

21 THE COURT: All right. We'll be in recess. Thanks,  
22 everyone.

23 (The foregoing sentencing was

24 concluded at 3:28 p.m.)

25

## CERTIFICATE

I certify that the foregoing is a correct transcript  
to the best of my ability over the telephone from the record of  
proceedings in the above-entitled matter.

s/ Shelly Semmler  
Shelly Semmler, RMR, CRR

9-14-16  
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